

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

SRMOF II 2012-1 TRUST, U.S. BANK  
NATIONAL ASSOCIATION, not in its  
individual capacity but solely at Trustee,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC;  
MOUNTAIN GATGE AT SUNRISE  
MOUNTAIN HOMEOWNERS  
ASSOCIATION; ABSOLUTE COLLECTION)  
SERVICES, LLC; DOE INDIVIDUALS I  
through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: 2:15-cv-01677-GMN-CWH

**ORDER**

Lenders and investors have been at odds over the legal effect of a homeowners' association's ("HOA") nonjudicial foreclosure of a superpriority lien on a lender's first trust deed pursuant to Nevada Revised Statutes § 116.3116. *See Freedom Mortg. Corp. v. Las Vegas Dev. Grp., LLC*, 106 F. Supp. 3d 1174, 1180 (D. Nev. 2015). The Nevada Supreme Court seemed to have settled the debate in *SFR Invs. Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014), holding that "NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." *SFR*, 334 P.3d at 419.

However, on August 12, 2016, two members of a Ninth Circuit panel held in *Bourne Valley Court Trust v. Wells Fargo Bank* that Chapter 116's nonjudicial foreclosure scheme "facially violated mortgage lenders' constitutional due process rights" before it was amended in 2015. *Bourne Valley Ct. Trust v. Wells Fargo Bank*, 2016 WL 4254983, at \*5 (9th Cir. Aug. 12, 2016). As a result, *Bourne Valley* is likely dispositive of this and the hundreds of other

1 foreclosure cases pending in both state and federal court. To save the parties from the need to  
 2 invest resources briefing the effect of the *Bourne Valley* opinion before the finality of that  
 3 opinion has been determined, the Court **STAYS** all proceedings in this case pending exhaustion  
 4 of all appeals of *Bourne Valley*.

## 5 **I. LEGAL STANDARD**

6 “[T]he power to stay proceedings is incidental to the power inherent in every court to  
 7 control the disposition of the causes of action on its docket with economy of time and effort for  
 8 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “A trial  
 9 court may, with propriety, find it is efficient for its own docket and the fairest course for the  
 10 parties to enter a stay of an action before it, pending resolution of independent proceedings  
 11 which bear upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir.  
 12 1979). In deciding whether to grant a stay, a court may weigh the following: (1) the possible  
 13 damage which may result from the granting of a stay; (2) the hardship or inequity which a party  
 14 may suffer in being required to go forward; (3) the orderly course of justice measured in terms  
 15 of the simplifying or complicating of issues, proof, and questions of law which could be  
 16 expected to result from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).  
 17 However, “[o]nly in rare circumstances will a litigant in one case be compelled to stand aside  
 18 while a litigant in another settles the rule of law that will define the rights of both.” *Landis*, 299  
 19 U.S. at 255. A district court’s decision to grant or deny a *Landis* stay is a matter of discretion.  
 20 *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir.  
 21 2007).

## 22 **II. DISCUSSION**

23 At the center of this case are the HOA-foreclosure sale conducted pursuant to Nevada  
 24 Revised Statutes § 116.3116 and the competing arguments that the foreclosure sale either  
 25 extinguished the bank’s security interest under the *SFR* holding or had no legal effect because

1 the statutory scheme violates due process. Because the Ninth Circuit in *Bourne Valley* held that  
2 the scheme was facially unconstitutional, *see Bourne Valley*, 2016 WL 4254983, at \*5, the  
3 *Bourne Valley* opinion and any modification of that opinion have the potential to be dispositive  
4 of this case. Under this circumstance, the *Landis* factors weigh strongly in favor of staying this  
5 action pending final resolution of the *Bourne Valley* decision. Indeed, the possible prejudice to  
6 the parties is minimal as the only potential harm is that the parties may wait longer for  
7 resolution of this case if it is stayed. However, if this case is not stayed, a delay would also  
8 result from any motions for reconsideration that may be necessitated if the current decision in  
9 the *Bourne Valley* case does not stand. Accordingly, a stay is not likely to appreciably lengthen  
10 the life of this case. Further, in the absence of a stay, judicial resources may be unnecessarily  
11 expended to resolve issues which may ultimately be decided by higher courts to which this  
12 Court is bound to adhere. Because the *Bourne Valley* decision is squarely on point, the orderly  
13 course of justice likewise weighs in favor of a stay. Accordingly, the Court finds that staying  
14 this action pending final resolution of *Bourne Valley* would be efficient for the Court's own  
15 docket and the fairest course for the parties. *See Leyva*, 593 F.2d at 863.

### 16 **III. CONCLUSION**

17 **IT IS THEREFORE ORDERED** that this case is administratively **STAYED** pending  
18 exhaustion of all appeals of *Bourne Valley Court Trust v. Wells Fargo Bank*, No. 15-15233 (9th  
19 Cir. Aug. 12, 2016). Once exhaustion occurs, any party may move to lift the stay. Until that  
20 time, all proceedings in this action are stayed.

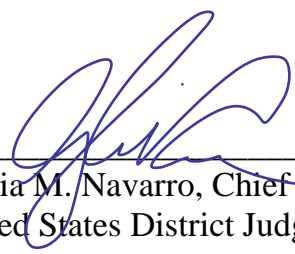
21 **IT IS FURTHER ORDERED** that all pending motions are **DENIED** without prejudice  
22 with leave to refile within twenty-one days after the stay is lifted.

23 **IT IS FURTHER ORDERED** that SFR Investments pool 1, LLC, shall care for,  
24 preserve, and maintain the Property.  
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1       **IT IS FURTHER ORDERED** that, beginning on April 25, 2017, the parties must file a  
2 joint status report updating the Court on the status of this case every one-hundred and eighty  
3 days. Along with the joint status report, SFR Investments pool 1, LLC, shall submit a  
4 statement affirming that all expenses necessary to maintain the property, including but not  
5 limited to, timely and full payment of all homeowners association assessments, property taxes,  
6 and property insurance premiums due and owing or past due at any time during the effective  
7 period of this Stay are current and up to date.

8       **IT IS FURTHER ORDERED** that this Order does not prevent the parties from  
9 continuing to engage in settlement conference negotiations with the assistance of the Magistrate  
10 Judge.

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12       **DATED** this 25 day of October, 2016.

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16       Gloria M. Navarro, Chief Judge  
17       United States District Judge  
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